

APPEAL NO. 161897
FILED NOVEMBER 4, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 28, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on January 21, 2016; and (2) the claimant does not have any permanent impairment as a result of the compensable injury. The hearing officer noted in his decision and order that although properly notified, the claimant failed to appear for the CCH and failed to respond to the Texas Department of Insurance, Division of Workers' Compensation (Division) 10-day letter.

The claimant appealed, disputing the hearing officer's determinations of MMI and no permanent impairment. The respondent (carrier) responded, urging affirmance of the disputed MMI and impairment rating (IR) determinations.

DECISION

Reversed and remanded.

A decision and order from a prior CCH reflects the claimant sustained a compensable injury on (date of injury), when he fell and fractured his right 8th and 9th ribs. A CCH was convened on July 28, 2016, to resolve the issues of MMI and IR. The claimant did not attend the CCH. The claimant was sent a letter dated July 28, 2016, giving the claimant 10 days to contact the Division to request the hearing be reconvened to give him an opportunity to present evidence and/or to show good cause for his failure to appear at the CCH. On August 15, 2016, the hearing officer entered a decision adverse to the claimant which was sent to the parties under a cover letter dated August 17, 2016.

The claimant contends on appeal that he did not attend his initial appointment with the designated doctor because he was in the hospital and it was not until he recovered from his illness that he was aware he had missed the CCH and the time period to respond to the 10-day letter. The claimant additionally states in his appeal that he has since attended an appointment with the designated doctor appointed by the Division to address MMI and IR. The claimant makes factual allegations in his appeal that, if true, could constitute a basis for good cause for his failure to attend the CCH. We are not in a position to evaluate the credibility of the claimant in regard to these matters. Accordingly, we reverse the hearing officer's finding that the claimant did not have good cause for failing to appear at the CCH and remand the good cause issue to

the hearing officer for further action consistent with this decision. To provide a complete record, the hearing officer should permit the claimant to present evidence on the merits of his claim at the hearing on remand. We therefore reverse the hearing officer's determinations that the claimant reached MMI on January 21, 2016, and that the claimant does not have any permanent impairment as a result of the compensable injury and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

We note the Appeals Panel has stated that "[u]nder the provisions of Section 408.125, no determination can be made regarding the claimant's IR because there is no report from a designated doctor." See Appeals Panel Decision (APD) 020385, decided March 18, 2002. See also APD 142008, decided November 5, 2014, and APD 132423, decided December 19, 2013, in which the issues of MMI and IR were in dispute, and a designated doctor had not been appointed to opine on the issues of MMI and IR. In both APD 142008 and APD 132423, the Appeals Panel reversed the hearing officer's decision and remanded for a designated doctor to be appointed on the issues of MMI and IR.

SUMMARY

We reverse the hearing officer's determination that the claimant reached MMI on January 21, 2016, and remand the issue of MMI to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant does not have any permanent impairment as a result of the compensable injury and remand the issue of IR to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's finding that the claimant did not have good cause for failing to appear at the CCH and remand the good cause issue to the hearing officer for further action consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge